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THE MUDANIA CONFERENCE

On October 3 the armistice conference at Mudania was started. The next day the Associated Press reported from Constantinople that an agreement was probable on all points of the Kemal proposals, submitted through Franklin-Bouillon, except the one relating to the occupation of the western line of the Maritza River by Allied troops. The Allies were stated to have agreed to turn over Thrace to the Turks within 30 days, and an agreement had been reached to draw a line of demarcation between the British and Turkish forces around Chanak that would separate them by more than the distance of a rifle shot. The following day it was stated that the conference had come to an abrupt halt, and General Harrington and other Allied representatives had returned to Constantinople. The belief was that the question of evacuation of Constantinople had been raised by the Turks, and the Allied representatives desired time for conference and advice.

On October 6 it was stated that the Turks had presented an ultimatum that Thrace be yielded to them at once, rejecting suggestions of the occupation of that State by Allied troops or the establishment of an Allied control commission. London reported on that night that the Cabinet was considering General Harrington's report of the ultimatum and conditions in general. Meantime Paris announced that Lord Curzon had returned there to discuss the general situation with Premier Poincare, and that the Italian Ambassador, Count Sforza, was expected to participate in the conference.

THE ALLIES' PROPOSAL

On October 7 it was announced in London that Great Britain had accepted plans made in Paris by Lord Curzon and Premier Poincare, under which the Turks would be given Thrace. The Greeks were to evacuate the territory with the understanding that the Allies would occupy it for 30 days to guarantee the safety of the non-Turkish population. These arrangements were to be made with the provision that the Turks were to accept the other features of an agreement reached by the Allied representatives in Paris on September 23, just before Franklin-Bouillon started for the Near East, especially those having to do with the freedom of the Straits.

On October 8 it was stated that the Mudania conference was about to be reopened, with the Allied representatives presenting a solid front, and on October 9 an Associated Press dispatch from Mudania stated that the conference had adjourned to enable Ismet Pasha, the Turkish representative, to lay the Allied proposals before the Angora Assembly, Ismet lacking authority to act upon them. The Turks, it was said, were less confident, feeling that they had failed to split the Allies.

The next day, October 10, a protocol embodying the revised proposals of the Allies, set forth above, was signed by all the powers represented at Mudania. The Angora Assembly had instructed Ismet to accept. This protocol was to have force until a peace treaty could be drawn.

THE DAUGHERTY LIQUOR RULING AS TO FOREIGN SHIPS

Attorney-General Harry M. Daugherty on October 6 handed down a ruling covering the effect of the Eighteenth Amendment and the Volstead Act on American ships and

foreign ships operating within the three-mile limit of American territory that, in its latter aspect, probably will lead to interesting discussion of the every-day part of international relationships.

Mr. Daugherty held that no foreign ship could bring liquor within the three-mile limit of American territory, whether as ship cargo or as stores and whether or not in seal. He was influenced largely by the decision in May of the Supreme Court, handed down by Mr. Justice Holmes, in the Walker and Anchor Line cases. The effect of Mr. Daugherty's ruling is that, legally at least, no foreign ship with liquor on board may enter any port of the United States; or any port of Porto Rico, the Philippines, the Virgin Islands, or Hawaii. (The Canal Zone is not affected, under provisions of the Volstead Act.) The consequent dislocation of foreign shipping, assuming that the law will be enforced, is obvious.

MR. HUGHES EXPECTS NO PROTEST

Immediate protests were expected to be made to the State Department by other maritime nations. However, none was made in the first few days following the issuance of the opinion, and Secretary Hughes was understood to expect none, although there were newspaper reports of angry mutterings in other nations. The understanding in British circles in Washington was that a test case would be brought in the Federal Courts, probably by the Cunard interests, and carried to the Supreme Court. In the event the latter court overruled the Attorney-General, no representations from the British to the State Department would be necessary. In the event the Attorney-General was sustained, it was reported that the British, while then recognizing the legal soundness of the American position, would urge upon the State Department that the ruling so drastically affected the conduct of foreign shipping as to be in violation of the comity of nations.

The ruling was a complement to the one that liquor could not be transported or sold on American ships anywhere. Following the publication by Adolphus Busch, of the St. Louis brewing family, of the fact that liquor was being sold on boats owned by the Shipping Board, and that therefore the American Government was engaged in the liquor traffic while enforcing laws against its citizens being so engaged, the Attorney-General was asked for an opinion. Chairman Lasker, of the Shipping Board, who had upheld the sale of liquor on the board's boats, under an opinion given him by the board's counsel, Elmer Schlesinger, insisted that if liquor was to be ruled off American ships it should also be ruled off foreign ships, in so far as America could accomplish that. The Attorney-General having found that liquor should not be transported or sold on American ships anywhere, because American ships are constructively American territory, wherever they may be, the Administration doubtless was not distressed when the ruling also was made against foreign ships having liquor within the three-mile limit.

THE FOREIGN SHIP RULING

The part of Mr. Daugherty's opinion dealing with foreign ships follows:

It is a long-established principle of municipal and international law that a nation has the right to make and enforce laws covering its territorial waters as well as its land. In *United States v. Diekelman*, 92 U. S., 520, 525, Mr. Chief Justice Waite states:

"The merchant vessels of one country visiting the ports of another for the purposes of trade subject themselves to the laws which govern the port they visit, so long as they remain." (See also Moore's International Law Digest, Vol. II, 275 *et seq.*)

In 1885 Mr. Bayard, Secretary of State, wrote to the French Minister as follows:

"A foreign merchant vessel going into the port of a foreign State subjects herself to the laws of that State and is bound to conform to its commercial as well as to its police and other regulations during the period of her stay there. 'She is as much a *subditus temporaneus*,' remarks Sir R. Phillimore with reference to such a case, in *The Queen v. Keyn*, 2 Ex. D., 82, 'as the individual who visits the interior of the country for the purposes of pleasure or business.' (Moore's International Law Digest, Vol. II, p. 308.)

"It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement; for, as was said by Chief Justice Marshall in *The Exchange*, 7 Cranch, 116, 144, 'it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such . . . merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country.' (*United States v. Dieckman*, 92 U. S., 520; 1 Phillimore's Int. Law, 3d ed., 483, Sec. 351; Twiss, Law of Nations in Time of Peace, 229, Sec. 159; Creasy's Int. Law, 167, Sec. 176; Halleck's Int. Law, 1st ed., 171.) And the English judges have uniformly recognized the rights of the courts of the country of which the port is part to punish crimes committed by one foreigner on another in a foreign merchant ship. (*Regina v. Cunningham*, Bell C. C., 72; S. C., 8 Cox C. C., 104; *Regina v. Anderson*, 11 Cox C. C., 198, 204; S. C., L. R., 1 C. C., 161, 165; *Regina v. Keyn*, 13 Cox C. C., 403, 486, 525; S. C., 2 Fx. Div., 63, 161, 213.) As the owner has voluntarily taken his vessel for his own private purposes to a place within the dominion of a government other than his own, and from which he seeks protection during his stay, he owes that government such allegiance for the time being as is due for the protection to which he becomes entitled." (*Wildenhue's Case*, 120 U. S., 11, 12.)

If, then, the bringing in of liquors by foreign vessels, as ship stores or otherwise, constitutes a transportation or possession contrary to the Eighteenth Amendment and the National Prohibition Act, it is clearly a violation of the law that no executive or administrative officer of the government has the power to permit.

The Constitution prohibits transportation which has been defined as "the taking up persons or property at some point and putting them down at another." (*Gloucester Ferry Company v. Comm. of Pa.*, 114 U. S., 196, 203.) That the innocence of any intent to "put them down" or use them in the United States is not material in determining whether the transportation is a violation of the law is determined by the Walker and Anchor Line cases (*supra*), where the court decided that intoxicating liquor stored on one British ship could not lawfully be removed to another British ship in the New York harbor, although it was admittedly destined for beverage uses outside the United States.

Furthermore, the National Prohibition Act prohibits possession as well as transportation of intoxicants for beverage purposes, irrespective of where they are to be put to such beverage use. Under the reasoning of the court in the Walker and Anchor Line cases (*supra*), it is no argument for the legality of foreign ships possessing and transporting intoxicating liquors in and across our waters that they do not intend to use the liquors until after leaving the jurisdiction of the United States, for the court said in that connection:

"The Eighteenth Amendment meant a great revolution in the policy of this country, and presumably and obviously meant to upset a good many things on as well as off the statute book. It did not confine itself in any meticulous way to the use of intoxicants in this country. . . . It is obvious that those whose wishes and opinions were embodied in the amendment meant to stop the whole busi-

ness. They did not want intoxicating liquor in the United States and reasonably may have thought that if they let it in some of it was likely to stay. When, therefore, the amendment forbids not only importation into and exportation from the United States, but transportation within it, the natural meaning of the words expresses an altogether probable intent. The Prohibition Act only fortifies in this respect the interpretation of the amendment itself. The manufacture, possession, sale and transportation of spirits and wine for other than beverage purposes are provided for in the act, but there is no provision for transshipment or carriage across the country from without. When Congress was ready to permit such a transit for special reasons, in the Canal Zone, it permitted it in express words. Title III, Sec. 20; 41 Stat., 322."

Are we, then, to argue that such inflexible provisions of law, declared by our Supreme Court as the constitutional policy of our country, shall apply to our own citizens, but be abandoned when we deal with ships of a foreign nation? To do so would be a grievous surrender of our sovereignty. And it is outside the province of an executive or administrative officer of the government to read into the law and the Constitution an exception not specifically contained therein. Particularly should it be avoided when the results of granting the privilege to foreign ships would be to produce manifestly unfair conditions of competition for our own citizens and shipping interests. Chief Justice Marshall puts the situation clearly in *The Exchange*, 7 Cranch, 135, 143:

"The jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation not imposed by itself." . . . "When private individuals of one nation spread themselves through another, as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries are not employed by him, nor are they engaged in national pursuits. Consequently, there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter can never be construed to grant such exemption."

Again in the *Eagle*, 8 Wallace, 15, 22, the Supreme Court holds that:

"All vessels entering into, or departing from, a domestic or foreign port are bound to obey the laws and well-known usages of the port, and are subject to seizure and penalties for disobedience; and when submitting to them they are entitled to all the protection which they afford."

The court carefully considered this whole question in the Walker and Anchor Line cases and went so far as to hold that the Eighteenth Amendment and the National Prohibition Act repealed a prior existing treaty with Great Britain.

Prior to the sweeping and comprehensive construction placed upon the prohibition law in those cases, it might possibly have been arguable whether liquors forming a part of the ship stores on vessels within territorial waters might be regarded as an implied exception to the National Prohibition Act. Whatever doubts that may have previously existed have been swept away by the language of the majority opinion in those cases. It is true that this decision was rendered by a divided court, but the dissenting opinion clearly sets forth the arguments that must have been carefully weighed before the majority opinion was rendered. It included a consideration of such arguments as "this country does not undertake to regulate the habits of people elsewhere" and "it has no interest in meddling with transportation across its territory if leakage in transit is prevented." But the very vigor of the dissenting opinion, in which three judges joined, simply emphasized the sweeping character of the majority opinion, by which I feel I am bound in deciding this question.

I am, therefore, of the opinion that the Eighteenth Amendment and the National Prohibition Act prohibit as unlawful

the possession and transportation of beverage liquors on board foreign vessels while in our territorial waters, whether such liquors are sealed or open.

By way of summary, therefore, I am of the opinion that, under the rules of fair intentment, American ships, wherever they may be, are included in the terms of the Eighteenth Amendment, "territory subject to the jurisdiction" of the United States, so that manufacture, transportation, or sale of intoxicating liquors for beverage purposes is prohibited thereon. To construe otherwise would, in my opinion, violate the unmistakable intent in the adoption, such intent clearly adduced from the study of the circumstances out of which it grew, and voiced by the Supreme Court in the Walker and Anchor Line cases.

This interpretation is further supported by the many authorities that have held ships to be "constructive territory" of the country whose flag they fly. Such decisions undoubtedly extend the protection as well as the inhibitions of the country's laws.

The National Prohibition Act is an act of general jurisdiction, in force wherever the Eighteenth Amendment applies, and the courts of the United States have jurisdiction to punish its violations on the high seas.

I am forced to the opinion, under the ruling of the Walker and Anchor Line decisions (*supra*), that foreign ships carrying intoxicating beverage liquors, as ship stores or otherwise, within the three-mile limit of our shores, are violating the provisions of the National Prohibition Act, prohibiting possession or transportation of intoxicating liquors for beverage purposes. The Supreme Court therein has held that it is not material that the liquors may not be intended for beverage uses within the United States, because the court emphasized that the Eighteenth Amendment marks a revolution in our former national policy toward intoxicating liquor, and does not confine its prohibition in any meticulous way within the United States, but, on the contrary, its intent was as far as possible to "stop the whole business."

Respectfully,

HARRY M. DAUGHEERTY,
Attorney-General.

Honorable Andrew W. Mellon, Secretary of the Treasury.

M. P. M. MATTHEEF AND MR. GORDON GORDON-SMITH CLASH

In the April issue of the *ADVOCATE OF PEACE* Mr. Gordon Gordon-Smith contributed an article on "Balkan Problems and Their Solution." To that article serious exception was taken on behalf of Bulgaria by M. P. M. Mattheef. The Editor of the *ADVOCATE* submitted M. Mattheef's criticism to Mr. Gordon-Smith, and now prints both M. Mattheef's criticism and Mr. Gordon-Smith's reply.

Below is M. Mattheef's criticism:

TO THE EDITOR OF THE *ADVOCATE OF PEACE*.

SIR: A good cause has no need of violence to defend it; a strong man or a man raised to strength loses by kicking his adversary on the ground. Such action proves his weakness; it prejudices his claim for justice.

Mr. Gordon Gordon-Smith, in his article published in your number for April last, plays the part of spokesman for Serbia against Bulgaria. Bulgaria is a country humiliated, torn to pieces, disarmed, weighted with financial burdens, scarcely independent, as no other country of the lately engaged in war. Serbia, on the other hand, has suddenly acquired power and extent, three times and more than she had dreamed of before the war. Bulgaria is on the ground. Serbia on the apex of her success. Whence, then, and how are to be explained the violent attack upon Bulgaria; whence the unmeasured, unscrupulous statements of Mr. Gordon Gordon-Smith in the above-mentioned article on the relations between Bulgaria and Serbia? Mr. Gordon Gordon-Smith claims everything good for Serbia and charges Bulgaria with every evil. He cannot, however, deny that the Bulgarian State is older than the Serbian; that it was

from Bulgaria that the Serbians received their writing, their literature; that quite recently it was the crushing defeats the Bulgarians inflicted upon the common enemy, the Turks, that gave the Serbians the possibility of extracting themselves from the slough of despond into which they had hopelessly fallen.

Is there not something wrong with Serbia to require such an unseemly virulent defense? Such a violent, flagrantly prejudiced attack upon one nation in defense of another cannot contribute to an understanding and peace, and I am somewhat surprised that it should have found space in the *ADVOCATE OF PEACE*.

Mr. Gordon Gordon-Smith is an old hand at this game; he has specialized at it; I have met him before in the press; but he takes no account of corrections, and, unable to refute facts and history, repeats himself from time to time, callous of what the few well-informed on the subject have to say. A blindly prejudiced and the most chauvinistic Serbian could not beat him at this his special work.

But to the subject. Every one of the statements, assertions, and insinuations of Mr. Gordon Gordon-Smith are unfounded. I do not exaggerate. History and facts are common to all who desire knowledge; these are against Mr. Gordon Gordon-Smith.

I will take up the most flagrant statement of Mr. Gordon Gordon-Smith and will say what I have to say in a more or less negative form. Bulgaria was never under the protection of the Central Powers. Russian influence, naturally, was always predominant up to the time when Bulgaria joined in the last war. This influence was at times desired, at times imposed; but it was there.

The people of Macedonia, whom he calls Slavs, have for over a thousand years been Bulgarians and are openly such today. He admits that the Serbian schoolmaster is to convert them into Serbians.

Bulgaria is open to a plebiscite; not so is Serbia. The great Byzantine Emperor, Basil II, in 1014, defeated the Bulgarian King Samuel, who had his capital in Ochrid, the most western town in Macedonia; took some 15,000 prisoners of war and had their eyes gouged out, leaving one eye to every hundred, and sent them back to their great and brave king. This broke the heart of King Samuel and he died two days after from grief. History has rewarded the prowess of Basil II by according to him the distinguished name of "The Bulgarian killer" (Bulgarochton).

On the coalition of Bulgaria's allies defeating Bulgaria, in the Second Balkan War, in 1913, followed by wholesale murder and atrocities committed in Macedonia by the Greek army (see report of "*International Commission to Enquire into the Causes and Conduct of the Balkan Wars*," instituted by the Carnegie Endowment for International Peace Fund), King Constantine, to emulate Basil II, had a medal struck in commemoration of his prowess, with the portrait of Basil II on one side and his own on the other, with the inscription of "Bulgarochton" added to his name. As the Macedonians were Bulgarians in 1014, such they were in 1913; such they are today.

Mr. Gordon Gordon-Smith wishes to hammer treachery into the Bulgarians because of the incident on the 29th of June, 1913, when Bulgaria, without notice, delivered a partial attack upon the Serbians.

A treaty had been signed on the 29th of February, 1912, between Bulgaria, Serbia, Greece, and Montenegro. On the strength of this treaty the allies went into the war against the common enemy, Turkey. It is common knowledge that the Bulgarian army bore the brunt of this war and obliged the enemy to sue for peace. Serbia had failed to execute the clauses of the treaty as regards the partition of conquered territory, and while the whole of the Bulgarian forces were exhausting themselves on the Tchataldja and Boulair lines against the common enemy, those of the Serbians were reposing in camps and towns or raising fortifications against Bulgaria and in territory which, according to the treaty, was Bulgarian, and the Serbian Government concluded with Greece an offensive and defensive treaty against Bulgaria with the sole object of depriving Bulgaria of the fruits of her splendid victories, recognized to her by the treaty. This treaty between Bulgaria's allies, Serbia and Greece, was concluded on the 5th of May, 1913. Besides, a manifesto had been issued by the King of Serbia,